

HB 2771 - H AMD 1087

By Representative Hudgins

WITHDRAWN 02/13/2012

1 Strike everything after the enacting clause and insert the
2 following:

3
4 NEW SECTION. **Sec. 1.** (1) On August 18, 2011, the state supreme
5 court entered an opinion in the matter of Dolan v. King County, Cause
6 No. 82842-3. The court recognized that a public employees' retirement
7 system eligible employee must work for a public employees' retirement
8 system employer under RCW 41.40.010. The court also said that in very
9 unusual circumstances, employees of an "arm and agency" of a
10 government employer are actually employees of the government employer.
11 This act is intended to codify the court's narrow and limited
12 definition of "arm and agency."

13 (2) The legislature has not intended in its pension legislation
14 to provide retirement system eligibility to employees of government
15 contractors. Only in narrow circumstances, such as employees of
16 entities, including nonprofits created by government, has the
17 department of retirement systems permitted retirement system
18 eligibility for employees of government contractors.

19 (3) It is not the intent of the legislature to change the
20 substance or effect of any statute previously enacted. This act is
21 curative and remedial, but shall have no application to any final
22 decision of the state supreme court or any pending claims in the case
23 resulting in that decision.

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25 NEW SECTION. **Sec. 2.** This act does not affect the supreme
26 court's decision in favor of the class of King County public
27 defenders and staff in Dolan v. King County, 172 Wn.2d 299 (2010).

1 The rights of any King County public defenders and staff to the public
2 employees' retirement system enrollment and eligibility in the Dolan
3 case, and the remedies in the Dolan case, shall be determined not by
4 this act, but by the law existing before this act as applied in the
5 Dolan case. The rights of any public defenders and staff, now and in
6 the future, shall be determined by the standards and principles in the
7 law applied in the Dolan case.

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9 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.04 RCW
10 to codify the Dolan decision as follows:

11 (1) "Arm and agency" of a government employer shall be limited to
12 corporations or other entities that: (a) perform government services
13 mandated by constitution or state statute; (b) are entirely or almost
14 entirely local or state government funded; and (c) are subject to
15 comprehensive control by a government employer.

16 (2) The entire relationship between the contractor and the
17 government employer must be reviewed in order to determine whether the
18 contractor is an arm and agency of the government employer. Whether
19 or not the parties intend to establish an independent contractor
20 relationship is not controlling. When comprehensive control is
21 present, any disclaimers or documents to the contrary are not binding.
22 Comprehensive control shall be determined by the facts, based on
23 consideration of these non-exclusive factors:

24 (a) A government employer creating an "arm and agency" to perform
25 a government function;

26 (b) A government employer treating the "arm and agency" the same
27 as other agencies or departments of the employer;

28 (c) A government employer including the "arm and agency" in its
29 budget process;

30 (d) A government employer having control and approval power over
31 the expenditures, leases, or property acquisitions of the "arm and
32 agency;"

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1 (e) A government employer making profits, reserves, property, or
2 leftover funds of the "arm and agency" subject to the government
3 employer's ownership or control;

4 (f) A government employer substantially limiting the financial
5 independence of the "arm and agency" by giving unilateral budget
6 directions to the "arm and agency;"

7 (g) A government employer setting the amount paid to the "arm and
8 agency" not by negotiation or bid, but by the government employer's
9 budget process;

10 (h) A government employer passing on the government employer's
11 budget actions such as raises or cuts to the "arm and agency" without
12 negotiations;

13 (i) A government employer greatly limiting or precluding services
14 for others that may be performed by the "arm and agency;"

15 (j) A government employer imposing control over the "arm and
16 agency" through the articles, bylaws, or other governing documents;

17 (k) A government employer denying the "arm and agency" the
18 opportunity to make a profit or build up reserves;

19 (l) A government employer making the "arm and agency" subject to
20 termination at will or termination upon convenience and without
21 substantial cause; and

22 (m) A government employer setting the pay of the employees of the
23 "arm and agency."

24 (3) Governments can and should expect high standards of
25 performance from their government contractors. Prudent financial
26 controls and careful oversight of contract compliance do not render a
27 government contractor an "arm and agency."

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29 **Sec. 4.** RCW 41.26.030 and 2011 1st sp.s. c 5 s 1 are each amended
30 to read as follows:

31 As used in this chapter, unless a different meaning is plainly
32 required by the context:

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1 (1) "Accumulated contributions" means the employee's contributions
2 made by a member, including any amount paid under RCW 41.50.165(2),
3 plus accrued interest credited thereon.

4 (2) "Actuarial reserve" means a method of financing a pension or
5 retirement plan wherein reserves are accumulated as the liabilities
6 for benefit payments are incurred in order that sufficient funds will
7 be available on the date of retirement of each member to pay the
8 member's future benefits during the period of retirement.

9 (3) "Actuarial valuation" means a mathematical determination of
10 the financial condition of a retirement plan. It includes the
11 computation of the present monetary value of benefits payable to
12 present members, and the present monetary value of future employer and
13 employee contributions, giving effect to mortality among active and
14 retired members and also to the rates of disability, retirement,
15 withdrawal from service, salary and interest earned on investments.

16 (4)(a) "Basic salary" for plan 1 members, means the basic monthly
17 rate of salary or wages, including longevity pay but not including
18 overtime earnings or special salary or wages, upon which pension or
19 retirement benefits will be computed and upon which employer
20 contributions and salary deductions will be based.

21 (b) "Basic salary" for plan 2 members, means salaries or wages
22 earned by a member during a payroll period for personal services,
23 including overtime payments, and shall include wages and salaries
24 deferred under provisions established pursuant to sections 403(b),
25 414(h), and 457 of the United States Internal Revenue Code, but shall
26 exclude lump sum payments for deferred annual sick leave, unused
27 accumulated vacation, unused accumulated annual leave, or any form of
28 severance pay. In any year in which a member serves in the
29 legislature the member shall have the option of having such member's
30 basic salary be the greater of:

31 (i) The basic salary the member would have received had such
32 member not served in the legislature; or

33 (ii) Such member's actual basic salary received for nonlegislative
34 public employment and legislative service combined. Any additional

1 contributions to the retirement system required because basic salary
2 under (b)(i) of this subsection is greater than basic salary under
3 (b)(ii) of this subsection shall be paid by the member for both member
4 and employer contributions.

5 (5)(a) "Beneficiary" for plan 1 members, means any person in
6 receipt of a retirement allowance, disability allowance, death
7 benefit, or any other benefit described herein.

8 (b) "Beneficiary" for plan 2 members, means any person in receipt
9 of a retirement allowance or other benefit provided by this chapter
10 resulting from service rendered to an employer by another person.

11 (6)(a) "Child" or "children" means an unmarried person who is
12 under the age of eighteen or mentally or physically disabled as
13 determined by the department, except a person who is disabled and in
14 the full time care of a state institution, who is:

15 (i) A natural born child;

16 (ii) A stepchild where that relationship was in existence prior to
17 the date benefits are payable under this chapter;

18 (iii) A posthumous child;

19 (iv) A child legally adopted or made a legal ward of a member
20 prior to the date benefits are payable under this chapter; or

21 (v) An illegitimate child legitimized prior to the date any
22 benefits are payable under this chapter.

23 (b) A person shall also be deemed to be a child up to and
24 including the age of twenty years and eleven months while attending
25 any high school, college, or vocational or other educational
26 institution accredited, licensed, or approved by the state, in which
27 it is located, including the summer vacation months and all other
28 normal and regular vacation periods at the particular educational
29 institution after which the child returns to school.

30 (7) "Department" means the department of retirement systems
31 created in chapter 41.50 RCW.

32 (8) "Director" means the director of the department.

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1 (9) "Disability board" for plan 1 members means either the county
2 disability board or the city disability board established in RCW
3 41.26.110.

4 (10) "Disability leave" means the period of six months or any
5 portion thereof during which a member is on leave at an allowance
6 equal to the member's full salary prior to the commencement of
7 disability retirement. The definition contained in this subsection
8 shall apply only to plan 1 members.

9 (11) "Disability retirement" for plan 1 members, means the period
10 following termination of a member's disability leave, during which the
11 member is in receipt of a disability retirement allowance.

12 (12) "Domestic partners" means two adults who have registered as
13 domestic partners under RCW 26.60.020.

14 (13) "Employee" means any law enforcement officer or firefighter
15 as defined in subsections (16) and (18) of this section.

16 (14)(a) "Employer" for plan 1 members, means the legislative
17 authority of any city, town, county, or district or the elected
18 officials of any municipal corporation that employs any law
19 enforcement officer and/or firefighter, any authorized association of
20 such municipalities, and, except for the purposes of RCW 41.26.150,
21 any labor guild, association, or organization, which represents the
22 firefighters or law enforcement officers of at least seven cities of
23 over 20,000 population and the membership of each local lodge or
24 division of which is composed of at least sixty percent law
25 enforcement officers or firefighters as defined in this chapter.

26 (b) "Employer" for plan 2 members, means the following entities to
27 the extent that the entity employs any law enforcement officer and/or
28 firefighter:

29 (i) The legislative authority of any city, town, county, or
30 district;

31 (ii) The elected officials of any municipal corporation;

32 (iii) The governing body of any other general authority law
33 enforcement agency; or

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1 (iv) A four-year institution of higher education having a fully
2 operational fire department as of January 1, 1996.

3 (c) Except as otherwise specifically provided in this chapter,
4 "employer" does not include a government contractor. For purposes of
5 this subsection, a "government contractor" is any entity, including a
6 partnership, limited liability company, for-profit or nonprofit
7 corporation, or person, that provides services pursuant to a contract
8 with an employer. A "government contractor" may be an "arm and
9 agency" of an "employer," making employees of the contractor employees
10 of the "employer" in the very limited circumstances described in
11 section 3 of this act.

12 (15)(a) "Final average salary" for plan 1 members, means (i) for a
13 member holding the same position or rank for a minimum of twelve
14 months preceding the date of retirement, the basic salary attached to
15 such same position or rank at time of retirement; (ii) for any other
16 member, including a civil service member who has not served a minimum
17 of twelve months in the same position or rank preceding the date of
18 retirement, the average of the greatest basic salaries payable to such
19 member during any consecutive twenty-four month period within such
20 member's last ten years of service for which service credit is
21 allowed, computed by dividing the total basic salaries payable to such
22 member during the selected twenty-four month period by twenty-four;
23 (iii) in the case of disability of any member, the basic salary
24 payable to such member at the time of disability retirement; (iv) in
25 the case of a member who hereafter vests pursuant to RCW 41.26.090,
26 the basic salary payable to such member at the time of vesting.

27 (b) "Final average salary" for plan 2 members, means the monthly
28 average of the member's basic salary for the highest consecutive sixty
29 service credit months of service prior to such member's retirement,
30 termination, or death. Periods constituting authorized unpaid leaves
31 of absence may not be used in the calculation of final average salary.

32 (c) In calculating final average salary under (a) or (b) of this
33 subsection, the department of retirement systems shall include:
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1 (i) Any compensation forgone by a member employed by a state
2 agency or institution during the 2009-2011 fiscal biennium as a result
3 of reduced work hours, mandatory or voluntary leave without pay,
4 temporary reduction in pay implemented prior to December 11, 2010, or
5 temporary layoffs if the reduced compensation is an integral part of
6 the employer's expenditure reduction efforts, as certified by the
7 employer; and

8 (ii) Any compensation forgone by a member employed by the state or
9 a local government employer during the 2011-2013 fiscal biennium as a
10 result of reduced work hours, mandatory leave without pay, temporary
11 layoffs, or reductions to current pay if the reduced compensation is
12 an integral part of the employer's expenditure reduction efforts, as
13 certified by the employer. Reductions to current pay shall not
14 include elimination of previously agreed upon future salary increases.

15 (16) "Firefighter" means:

16 (a) Any person who is serving on a full time, fully compensated
17 basis as a member of a fire department of an employer and who is
18 serving in a position which requires passing a civil service
19 examination for firefighter, and who is actively employed as such;

20 (b) Anyone who is actively employed as a full time firefighter
21 where the fire department does not have a civil service examination;

22 (c) Supervisory firefighter personnel;

23 (d) Any full time executive secretary of an association of fire
24 protection districts authorized under RCW 52.12.031. The provisions
25 of this subsection (16)(d) shall not apply to plan 2 members;

26 (e) The executive secretary of a labor guild, association or
27 organization (which is an employer under subsection (14) of this
28 section), if such individual has five years previous membership in a
29 retirement system established in chapter 41.16 or 41.18 RCW. The
30 provisions of this subsection (16)(e) shall not apply to plan 2
31 members;

32 (f) Any person who is serving on a full time, fully compensated
33 basis for an employer, as a fire dispatcher, in a department in which,
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1 on March 1, 1970, a dispatcher was required to have passed a civil
2 service examination for firefighter;

3 (g) Any person who on March 1, 1970, was employed on a full time,
4 fully compensated basis by an employer, and who on May 21, 1971, was
5 making retirement contributions under the provisions of chapter 41.16
6 or 41.18 RCW; and

7 (h) Any person who is employed on a full-time, fully compensated
8 basis by an employer as an emergency medical technician.

9 (17) "General authority law enforcement agency" means any agency,
10 department, or division of a municipal corporation, political
11 subdivision, or other unit of local government of this state, and any
12 agency, department, or division of state government, having as its
13 primary function the detection and apprehension of persons committing
14 infractions or violating the traffic or criminal laws in general, but
15 not including the Washington state patrol. Such an agency,
16 department, or division is distinguished from a limited authority law
17 enforcement agency having as one of its functions the apprehension or
18 detection of persons committing infractions or violating the traffic
19 or criminal laws relating to limited subject areas, including but not
20 limited to, the state departments of natural resources and social and
21 health services, the state gambling commission, the state lottery
22 commission, the state parks and recreation commission, the state
23 utilities and transportation commission, the state liquor control
24 board, and the state department of corrections.

25 (18) "Law enforcement officer" beginning January 1, 1994, means
26 any person who is commissioned and employed by an employer on a full
27 time, fully compensated basis to enforce the criminal laws of the
28 state of Washington generally, with the following qualifications:

29 (a) No person who is serving in a position that is basically
30 clerical or secretarial in nature, and who is not commissioned shall
31 be considered a law enforcement officer;

32 (b) Only those deputy sheriffs, including those serving under a
33 different title pursuant to county charter, who have successfully
34 completed a civil service examination for deputy sheriff or the

1 equivalent position, where a different title is used, and those
2 persons serving in unclassified positions authorized by RCW 41.14.070
3 except a private secretary will be considered law enforcement
4 officers;

5 (c) Only such full time commissioned law enforcement personnel as
6 have been appointed to offices, positions, or ranks in the police
7 department which have been specifically created or otherwise expressly
8 provided for and designated by city charter provision or by ordinance
9 enacted by the legislative body of the city shall be considered city
10 police officers;

11 (d) The term "law enforcement officer" also includes the executive
12 secretary of a labor guild, association or organization (which is an
13 employer under subsection (14) of this section) if that individual has
14 five years previous membership in the retirement system established in
15 chapter 41.20 RCW. The provisions of this subsection (18)(d) shall
16 not apply to plan 2 members; and

17 (e) The term "law enforcement officer" also includes a person
18 employed on or after January 1, 1993, as a public safety officer or
19 director of public safety, so long as the job duties substantially
20 involve only either police or fire duties, or both, and no other
21 duties in a city or town with a population of less than ten thousand.
22 The provisions of this subsection (18)(e) shall not apply to any
23 public safety officer or director of public safety who is receiving a
24 retirement allowance under this chapter as of May 12, 1993.

25 (19) "Medical services" for plan 1 members, shall include the
26 following as minimum services to be provided. Reasonable charges for
27 these services shall be paid in accordance with RCW 41.26.150.

28 (a) Hospital expenses: These are the charges made by a hospital,
29 in its own behalf, for

30 (i) Board and room not to exceed semiprivate room rate unless
31 private room is required by the attending physician due to the
32 condition of the patient.

33 (ii) Necessary hospital services, other than board and room,
34 furnished by the hospital.

1 (b) Other medical expenses: The following charges are considered
2 "other medical expenses", provided that they have not been considered
3 as "hospital expenses".

4 (i) The fees of the following:

5 (A) A physician or surgeon licensed under the provisions of
6 chapter 18.71 RCW;

7 (B) An osteopathic physician and surgeon licensed under the
8 provisions of chapter 18.57 RCW;

9 (C) A chiropractor licensed under the provisions of chapter 18.25
10 RCW.

11 (ii) The charges of a registered graduate nurse other than a nurse
12 who ordinarily resides in the member's home, or is a member of the
13 family of either the member or the member's spouse.

14 (iii) The charges for the following medical services and supplies:

15 (A) Drugs and medicines upon a physician's prescription;

16 (B) Diagnostic X-ray and laboratory examinations;

17 (C) X-ray, radium, and radioactive isotopes therapy;

18 (D) Anesthesia and oxygen;

19 (E) Rental of iron lung and other durable medical and surgical
20 equipment;

21 (F) Artificial limbs and eyes, and casts, splints, and trusses;

22 (G) Professional ambulance service when used to transport the
23 member to or from a hospital when injured by an accident or stricken
24 by a disease;

25 (H) Dental charges incurred by a member who sustains an accidental
26 injury to his or her teeth and who commences treatment by a legally
27 licensed dentist within ninety days after the accident;

28 (I) Nursing home confinement or hospital extended care facility;

29 (J) Physical therapy by a registered physical therapist;

30 (K) Blood transfusions, including the cost of blood and blood
31 plasma not replaced by voluntary donors;

32 (L) An optometrist licensed under the provisions of chapter 18.53
33 RCW.

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1 (20) "Member" means any firefighter, law enforcement officer, or
2 other person as would apply under subsections (16) or (18) of this
3 section whose membership is transferred to the Washington law
4 enforcement officers' and firefighters' retirement system on or after
5 March 1, 1970, and every law enforcement officer and firefighter who
6 is employed in that capacity on or after such date.

7 (21) "Plan 1" means the law enforcement officers' and
8 firefighters' retirement system, plan 1 providing the benefits and
9 funding provisions covering persons who first became members of the
10 system prior to October 1, 1977.

11 (22) "Plan 2" means the law enforcement officers' and
12 firefighters' retirement system, plan 2 providing the benefits and
13 funding provisions covering persons who first became members of the
14 system on and after October 1, 1977.

15 (23) "Position" means the employment held at any particular time,
16 which may or may not be the same as civil service rank.

17 (24) "Regular interest" means such rate as the director may
18 determine.

19 (25) "Retiree" for persons who establish membership in the
20 retirement system on or after October 1, 1977, means any member in
21 receipt of a retirement allowance or other benefit provided by this
22 chapter resulting from service rendered to an employer by such member.

23 (26) "Retirement fund" means the "Washington law enforcement
24 officers' and firefighters' retirement system fund" as provided for
25 herein.

26 (27) "Retirement system" means the "Washington law enforcement
27 officers' and firefighters' retirement system" provided herein.

28 (28)(a) "Service" for plan 1 members, means all periods of
29 employment for an employer as a firefighter or law enforcement
30 officer, for which compensation is paid, together with periods of
31 suspension not exceeding thirty days in duration. For the purposes of
32 this chapter service shall also include service in the armed forces of
33 the United States as provided in RCW 41.26.190. Credit shall be
34 allowed for all service credit months of service rendered by a member

1 from and after the member's initial commencement of employment as a
2 firefighter or law enforcement officer, during which the member worked
3 for seventy or more hours, or was on disability leave or disability
4 retirement. Only service credit months of service shall be counted in
5 the computation of any retirement allowance or other benefit provided
6 for in this chapter.

7 (i) For members retiring after May 21, 1971 who were employed
8 under the coverage of a prior pension act before March 1, 1970,
9 "service" shall also include (A) such military service not exceeding
10 five years as was creditable to the member as of March 1, 1970, under
11 the member's particular prior pension act, and (B) such other periods
12 of service as were then creditable to a particular member under the
13 provisions of RCW 41.18.165, 41.20.160, or 41.20.170. However, in no
14 event shall credit be allowed for any service rendered prior to March
15 1, 1970, where the member at the time of rendition of such service was
16 employed in a position covered by a prior pension act, unless such
17 service, at the time credit is claimed therefor, is also creditable
18 under the provisions of such prior act.

19 (ii) A member who is employed by two employers at the same time
20 shall only be credited with service to one such employer for any month
21 during which the member rendered such dual service.

22 (b) "Service" for plan 2 members, means periods of employment by a
23 member for one or more employers for which basic salary is earned for
24 ninety or more hours per calendar month which shall constitute a
25 service credit month. Periods of employment by a member for one or
26 more employers for which basic salary is earned for at least seventy
27 hours but less than ninety hours per calendar month shall constitute
28 one-half service credit month. Periods of employment by a member for
29 one or more employers for which basic salary is earned for less than
30 seventy hours shall constitute a one-quarter service credit month.

31 Members of the retirement system who are elected or appointed to a
32 state elective position may elect to continue to be members of this
33 retirement system.

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1 Service credit years of service shall be determined by dividing
2 the total number of service credit months of service by twelve. Any
3 fraction of a service credit year of service as so determined shall be
4 taken into account in the computation of such retirement allowance or
5 benefits.

6 If a member receives basic salary from two or more employers
7 during any calendar month, the individual shall receive one service
8 credit month's service credit during any calendar month in which
9 multiple service for ninety or more hours is rendered; or one-half
10 service credit month's service credit during any calendar month in
11 which multiple service for at least seventy hours but less than ninety
12 hours is rendered; or one-quarter service credit month during any
13 calendar month in which multiple service for less than seventy hours
14 is rendered.

15 (29) "Service credit month" means a full service credit month or
16 an accumulation of partial service credit months that are equal to
17 one.

18 (30) "Service credit year" means an accumulation of months of
19 service credit which is equal to one when divided by twelve.

20 (31) "State actuary" or "actuary" means the person appointed
21 pursuant to RCW 44.44.010(2).

22 (32) "State elective position" means any position held by any
23 person elected or appointed to statewide office or elected or
24 appointed as a member of the legislature.

25 (33) "Surviving spouse" means the surviving widow or widower of a
26 member. "Surviving spouse" shall not include the divorced spouse of a
27 member except as provided in RCW 41.26.162.

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29 **Sec. 5.** RCW 41.32.010 and 2011 1st sp.s. c 5 s 2 are each amended
30 to read as follows:

31 As used in this chapter, unless a different meaning is plainly
32 required by the context:

33 (1)(a) "Accumulated contributions" for plan 1 members, means the
34 sum of all regular annuity contributions and, except for the purpose

1 of withdrawal at the time of retirement, any amount paid under RCW
2 41.50.165(2) with regular interest thereon.

3 (b) "Accumulated contributions" for plan 2 members, means the sum
4 of all contributions standing to the credit of a member in the
5 member's individual account, including any amount paid under RCW
6 41.50.165(2), together with the regular interest thereon.

7 (2) "Actuarial equivalent" means a benefit of equal value when
8 computed upon the basis of such mortality tables and regulations as
9 shall be adopted by the director and regular interest.

10 (3) "Adjustment ratio" means the value of index A divided by index
11 B.

12 (4) "Annual increase" means, initially, fifty-nine cents per month
13 per year of service which amount shall be increased each July 1st by
14 three percent, rounded to the nearest cent.

15 (5) "Annuity" means the moneys payable per year during life by
16 reason of accumulated contributions of a member.

17 (6) "Average final compensation" for plan 2 and plan 3 members,
18 means the member's average earnable compensation of the highest
19 consecutive sixty service credit months prior to such member's
20 retirement, termination, or death. Periods constituting authorized
21 leaves of absence may not be used in the calculation of average final
22 compensation except under RCW 41.32.810(2).

23 (7)(a) "Beneficiary" for plan 1 members, means any person in
24 receipt of a retirement allowance or other benefit provided by this
25 chapter.

26 (b) "Beneficiary" for plan 2 and plan 3 members, means any person
27 in receipt of a retirement allowance or other benefit provided by this
28 chapter resulting from service rendered to an employer by another
29 person.

30 (8) "Contract" means any agreement for service and compensation
31 between a member and an employer.

32 (9) "Creditable service" means membership service plus prior
33 service for which credit is allowable. This subsection shall apply
34 only to plan 1 members.

1 (10) "Department" means the department of retirement systems
2 created in chapter 41.50 RCW.

3 (11) "Dependent" means receiving one-half or more of support from
4 a member.

5 (12) "Director" means the director of the department.

6 (13) "Disability allowance" means monthly payments during
7 disability. This subsection shall apply only to plan 1 members.

8 (14)(a) "Earnable compensation" for plan 1 members, means:

9 (i) All salaries and wages paid by an employer to an employee
10 member of the retirement system for personal services rendered during
11 a fiscal year. In all cases where compensation includes maintenance
12 the employer shall fix the value of that part of the compensation not
13 paid in money.

14 (ii) For an employee member of the retirement system teaching in
15 an extended school year program, two consecutive extended school
16 years, as defined by the employer school district, may be used as the
17 annual period for determining earnable compensation in lieu of the two
18 fiscal years.

19 (iii) "Earnable compensation" for plan 1 members also includes the
20 following actual or imputed payments, which are not paid for personal
21 services:

22 (A) Retroactive payments to an individual by an employer on
23 reinstatement of the employee in a position, or payments by an
24 employer to an individual in lieu of reinstatement in a position which
25 are awarded or granted as the equivalent of the salary or wages which
26 the individual would have earned during a payroll period shall be
27 considered earnable compensation and the individual shall receive the
28 equivalent service credit.

29 (B) If a leave of absence, without pay, is taken by a member for
30 the purpose of serving as a member of the state legislature, and such
31 member has served in the legislature five or more years, the salary
32 which would have been received for the position from which the leave
33 of absence was taken shall be considered as compensation earnable if
34 the employee's contribution thereon is paid by the employee. In

1 addition, where a member has been a member of the state legislature
2 for five or more years, earnable compensation for the member's two
3 highest compensated consecutive years of service shall include a sum
4 not to exceed thirty-six hundred dollars for each of such two
5 consecutive years, regardless of whether or not legislative service
6 was rendered during those two years.

7 (iv) For members employed less than full time under written
8 contract with a school district, or community college district, in an
9 instructional position, for which the member receives service credit
10 of less than one year in all of the years used to determine the
11 earnable compensation used for computing benefits due under RCW
12 41.32.497, 41.32.498, and 41.32.520, the member may elect to have
13 earnable compensation defined as provided in RCW 41.32.345. For the
14 purposes of this subsection, the term "instructional position" means a
15 position in which more than seventy-five percent of the member's time
16 is spent as a classroom instructor (including office hours), a
17 librarian, a psychologist, a social worker, a nurse, a physical
18 therapist, an occupational therapist, a speech language pathologist or
19 audiologist, or a counselor. Earnable compensation shall be so
20 defined only for the purpose of the calculation of retirement benefits
21 and only as necessary to insure that members who receive fractional
22 service credit under RCW 41.32.270 receive benefits proportional to
23 those received by members who have received full-time service credit.

24 (v) "Earnable compensation" does not include:

25 (A) Remuneration for unused sick leave authorized under RCW
26 41.04.340, 28A.400.210, or 28A.310.490;

27 (B) Remuneration for unused annual leave in excess of thirty days
28 as authorized by RCW 43.01.044 and 43.01.041.

29 (b) "Earnable compensation" for plan 2 and plan 3 members, means
30 salaries or wages earned by a member during a payroll period for
31 personal services, including overtime payments, and shall include
32 wages and salaries deferred under provisions established pursuant to
33 sections 403(b), 414(h), and 457 of the United States Internal Revenue
34 Code, but shall exclude lump sum payments for deferred annual sick

1 leave, unused accumulated vacation, unused accumulated annual leave,
2 or any form of severance pay.

3 "Earnable compensation" for plan 2 and plan 3 members also
4 includes the following actual or imputed payments which, except in the
5 case of (b)(ii)(B) of this subsection, are not paid for personal
6 services:

7 (i) Retroactive payments to an individual by an employer on
8 reinstatement of the employee in a position or payments by an employer
9 to an individual in lieu of reinstatement in a position which are
10 awarded or granted as the equivalent of the salary or wages which the
11 individual would have earned during a payroll period shall be
12 considered earnable compensation, to the extent provided above, and
13 the individual shall receive the equivalent service credit.

14 (ii) In any year in which a member serves in the legislature the
15 member shall have the option of having such member's earnable
16 compensation be the greater of:

17 (A) The earnable compensation the member would have received had
18 such member not served in the legislature; or

19 (B) Such member's actual earnable compensation received for
20 teaching and legislative service combined. Any additional
21 contributions to the retirement system required because compensation
22 earnable under (b)(ii)(A) of this subsection is greater than
23 compensation earnable under (b)(ii)(B) of this subsection shall be
24 paid by the member for both member and employer contributions.

25 (c) In calculating earnable compensation under (a) or (b) of this
26 subsection, the department of retirement systems shall include:

27 (i) Any compensation forgone by a member employed by a state
28 agency or institution during the 2009-2011 fiscal biennium as a result
29 of reduced work hours, mandatory or voluntary leave without pay,
30 temporary reduction in pay implemented prior to December 11, 2010, or
31 temporary layoffs if the reduced compensation is an integral part of
32 the employer's expenditure reduction efforts, as certified by the
33 employer; and

34

1 (ii) Any compensation forgone by a member during the 2011-2013
2 fiscal biennium as a result of reduced work hours, mandatory leave
3 without pay, temporary layoffs, or reductions to current pay if the
4 reduced compensation is an integral part of the employer's expenditure
5 reduction efforts, as certified by the employer. Reductions to
6 current pay shall not include elimination of previously agreed upon
7 future salary reductions.

8 (15)(a) "Eligible position" for plan 2 members from June 7, 1990,
9 through September 1, 1991, means a position which normally requires
10 two or more uninterrupted months of creditable service during
11 September through August of the following year.

12 (b) "Eligible position" for plan 2 and plan 3 on and after
13 September 1, 1991, means a position that, as defined by the employer,
14 normally requires five or more months of at least seventy hours of
15 earnable compensation during September through August of the following
16 year.

17 (c) For purposes of this chapter an employer shall not define
18 "position" in such a manner that an employee's monthly work for that
19 employer is divided into more than one position.

20 (d) The elected position of the superintendent of public
21 instruction is an eligible position.

22 (16) "Employed" or "employee" means a person who is providing
23 services for compensation to an employer, unless the person is free
24 from the employer's direction and control over the performance of
25 work. The department shall adopt rules and interpret this subsection
26 consistent with common law.

27 (17) "Employer" means the state of Washington, the school
28 district, or any agency of the state of Washington by which the member
29 is paid. Except as otherwise specifically provided in this chapter,
30 "employer" does not include a government contractor. For purposes of
31 this subsection, a "government contractor" is any entity, including a
32 partnership, limited liability company, for-profit or nonprofit
33 corporation, or person, that provides services pursuant to a contract
34 with an employer. A "government contractor" may be an "arm and

1 agency" of an "employer," making employees of the contractor employees
2 of the "employer" in the very limited circumstances described in
3 section 3 of this act.

4 (18) "Fiscal year" means a year which begins July 1st and ends
5 June 30th of the following year.

6 (19) "Former state fund" means the state retirement fund in
7 operation for teachers under chapter 187, Laws of 1923, as amended.

8 (20) "Index" means, for any calendar year, that year's annual
9 average consumer price index, Seattle, Washington area, for urban wage
10 earners and clerical workers, all items compiled by the bureau of
11 labor statistics, United States department of labor.

12 (21) "Index A" means the index for the year prior to the
13 determination of a postretirement adjustment.

14 (22) "Index B" means the index for the year prior to index A.

15 (23) "Index year" means the earliest calendar year in which the
16 index is more than sixty percent of index A.

17 (24) "Local fund" means any of the local retirement funds for
18 teachers operated in any school district in accordance with the
19 provisions of chapter 163, Laws of 1917 as amended.

20 (25) "Member" means any teacher included in the membership of the
21 retirement system who has not been removed from membership under RCW
22 41.32.878 or 41.32.768. Also, any other employee of the public
23 schools who, on July 1, 1947, had not elected to be exempt from
24 membership and who, prior to that date, had by an authorized payroll
25 deduction, contributed to the member reserve.

26 (26) "Member account" or "member's account" for purposes of plan 3
27 means the sum of the contributions and earnings on behalf of the
28 member in the defined contribution portion of plan 3.

29 (27) "Member reserve" means the fund in which all of the
30 accumulated contributions of members are held.

31 (28) "Membership service" means service rendered subsequent to the
32 first day of eligibility of a person to membership in the retirement
33 system: PROVIDED, That where a member is employed by two or more
34 employers the individual shall receive no more than one service credit

1 month during any calendar month in which multiple service is rendered.
2 The provisions of this subsection shall apply only to plan 1 members.

3 (29) "Pension" means the moneys payable per year during life from
4 the pension reserve.

5 (30) "Pension reserve" is a fund in which shall be accumulated an
6 actuarial reserve adequate to meet present and future pension
7 liabilities of the system and from which all pension obligations are
8 to be paid.

9 (31) "Plan 1" means the teachers' retirement system, plan 1
10 providing the benefits and funding provisions covering persons who
11 first became members of the system prior to October 1, 1977.

12 (32) "Plan 2" means the teachers' retirement system, plan 2
13 providing the benefits and funding provisions covering persons who
14 first became members of the system on and after October 1, 1977, and
15 prior to July 1, 1996.

16 (33) "Plan 3" means the teachers' retirement system, plan 3
17 providing the benefits and funding provisions covering persons who
18 first become members of the system on and after July 1, 1996, or who
19 transfer under RCW 41.32.817.

20 (34) "Prior service" means service rendered prior to the first
21 date of eligibility to membership in the retirement system for which
22 credit is allowable. The provisions of this subsection shall apply
23 only to plan 1 members.

24 (35) "Prior service contributions" means contributions made by a
25 member to secure credit for prior service. The provisions of this
26 subsection shall apply only to plan 1 members.

27 (36) "Public school" means any institution or activity operated by
28 the state of Washington or any instrumentality or political
29 subdivision thereof employing teachers, except the University of
30 Washington and Washington State University.

31 (37) "Regular contributions" means the amounts required to be
32 deducted from the compensation of a member and credited to the
33 member's individual account in the member reserve. This subsection
34 shall apply only to plan 1 members.

1 (38) "Regular interest" means such rate as the director may
2 determine.

3 (39) "Retiree" means any person who has begun accruing a
4 retirement allowance or other benefit provided by this chapter
5 resulting from service rendered to an employer while a member.

6 (40)(a) "Retirement allowance" for plan 1 members, means monthly
7 payments based on the sum of annuity and pension, or any optional
8 benefits payable in lieu thereof.

9 (b) "Retirement allowance" for plan 2 and plan 3 members, means
10 monthly payments to a retiree or beneficiary as provided in this
11 chapter.

12 (41) "Retirement system" means the Washington state teachers'
13 retirement system.

14 (42) "Separation from service or employment" occurs when a person
15 has terminated all employment with an employer. Separation from
16 service or employment does not occur, and if claimed by an employer or
17 employee may be a violation of RCW 41.32.055, when an employee and
18 employer have a written or oral agreement to resume employment with
19 the same employer following termination. Mere expressions or
20 inquiries about postretirement employment by an employer or employee
21 that do not constitute a commitment to reemploy the employee after
22 retirement are not an agreement under this section.

23 (43)(a) "Service" for plan 1 members means the time during which a
24 member has been employed by an employer for compensation.

25 (i) If a member is employed by two or more employers the
26 individual shall receive no more than one service credit month during
27 any calendar month in which multiple service is rendered.

28 (ii) As authorized by RCW 28A.400.300, up to forty-five days of
29 sick leave may be creditable as service solely for the purpose of
30 determining eligibility to retire under RCW 41.32.470.

31 (iii) As authorized in RCW 41.32.065, service earned in an out-of-
32 state retirement system that covers teachers in public schools may be
33 applied solely for the purpose of determining eligibility to retire
34 under RCW 41.32.470.

1 (b) "Service" for plan 2 and plan 3 members, means periods of
2 employment by a member for one or more employers for which earnable
3 compensation is earned subject to the following conditions:

4 (i) A member employed in an eligible position or as a substitute
5 shall receive one service credit month for each month of September
6 through August of the following year if he or she earns earnable
7 compensation for eight hundred ten or more hours during that period
8 and is employed during nine of those months, except that a member may
9 not receive credit for any period prior to the member's employment in
10 an eligible position except as provided in RCW 41.32.812 and
11 41.50.132.

12 (ii) Any other member employed in an eligible position or as a
13 substitute who earns earnable compensation during the period from
14 September through August shall receive service credit according to one
15 of the following methods, whichever provides the most service credit
16 to the member:

17 (A) If a member is employed either in an eligible position or as a
18 substitute teacher for nine months of the twelve month period between
19 September through August of the following year but earns earnable
20 compensation for less than eight hundred ten hours but for at least
21 six hundred thirty hours, he or she will receive one-half of a service
22 credit month for each month of the twelve month period;

23 (B) If a member is employed in an eligible position or as a
24 substitute teacher for at least five months of a six-month period
25 between September through August of the following year and earns
26 earnable compensation for six hundred thirty or more hours within the
27 six-month period, he or she will receive a maximum of six service
28 credit months for the school year, which shall be recorded as one
29 service credit month for each month of the six-month period;

30 (C) All other members employed in an eligible position or as a
31 substitute teacher shall receive service credit as follows:

32 (I) A service credit month is earned in those calendar months
33 where earnable compensation is earned for ninety or more hours;

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1 (II) A half-service credit month is earned in those calendar
2 months where earnable compensation is earned for at least seventy
3 hours but less than ninety hours; and

4 (III) A quarter-service credit month is earned in those calendar
5 months where earnable compensation is earned for less than seventy
6 hours.

7 (iii) Any person who is a member of the teachers' retirement
8 system and who is elected or appointed to a state elective position
9 may continue to be a member of the retirement system and continue to
10 receive a service credit month for each of the months in a state
11 elective position by making the required member contributions.

12 (iv) When an individual is employed by two or more employers the
13 individual shall only receive one month's service credit during any
14 calendar month in which multiple service for ninety or more hours is
15 rendered.

16 (v) As authorized by RCW 28A.400.300, up to forty-five days of
17 sick leave may be creditable as service solely for the purpose of
18 determining eligibility to retire under RCW 41.32.470. For purposes
19 of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is
20 equal to two service credit months. Use of less than forty-five days
21 of sick leave is creditable as allowed under this subsection as
22 follows:

- 23 (A) Less than eleven days equals one-quarter service credit month;
- 24 (B) Eleven or more days but less than twenty-two days equals one-
25 half service credit month;
- 26 (C) Twenty-two days equals one service credit month;
- 27 (D) More than twenty-two days but less than thirty-three days
28 equals one and one-quarter service credit month;
- 29 (E) Thirty-three or more days but less than forty-five days equals
30 one and one-half service credit month.

31 (vi) As authorized in RCW 41.32.065, service earned in an out-of-
32 state retirement system that covers teachers in public schools may be
33 applied solely for the purpose of determining eligibility to retire
34 under RCW 41.32.470.

1 (vii) The department shall adopt rules implementing this
2 subsection.

3 (44) "Service credit month" means a full service credit month or
4 an accumulation of partial service credit months that are equal to
5 one.

6 (45) "Service credit year" means an accumulation of months of
7 service credit which is equal to one when divided by twelve.

8 (46) "State actuary" or "actuary" means the person appointed
9 pursuant to RCW 44.44.010(2).

10 (47) "State elective position" means any position held by any
11 person elected or appointed to statewide office or elected or
12 appointed as a member of the legislature.

13 (48) "Substitute teacher" means:

14 (a) A teacher who is hired by an employer to work as a temporary
15 teacher, except for teachers who are annual contract employees of an
16 employer and are guaranteed a minimum number of hours; or

17 (b) Teachers who either (i) work in ineligible positions for more
18 than one employer or (ii) work in an ineligible position or positions
19 together with an eligible position.

20 (49) "Teacher" means any person qualified to teach who is engaged
21 by a public school in an instructional, administrative, or supervisory
22 capacity. The term includes state, educational service district, and
23 school district superintendents and their assistants and all employees
24 certificated by the superintendent of public instruction; and in
25 addition thereto any full time school doctor who is employed by a
26 public school and renders service of an instructional or educational
27 nature.

28
29 **Sec. 6.** RCW 41.35.010 and 2011 1st sp.s. c 5 s 3 are each
30 reenacted and amended to read as follows:

31 The definitions in this section apply throughout this chapter,
32 unless the context clearly requires otherwise.

33 (1) "Accumulated contributions" means the sum of all contributions
34 standing to the credit of a member in the member's individual account,

1 including any amount paid under RCW 41.50.165(2), together with the
2 regular interest thereon.

3 (2) "Actuarial equivalent" means a benefit of equal value when
4 computed upon the basis of such mortality and other tables as may be
5 adopted by the director.

6 (3) "Adjustment ratio" means the value of index A divided by index
7 B.

8 (4) "Annuity" means payments for life derived from accumulated
9 contributions of a member. All annuities shall be paid in monthly
10 installments.

11 (5)(a) "Average final compensation" for plan 2 and plan 3 members
12 means the member's average compensation earnable of the highest
13 consecutive sixty months of service credit months prior to such
14 member's retirement, termination, or death. Periods constituting
15 authorized leaves of absence may not be used in the calculation of
16 average final compensation except under RCW 41.40.710(2).

17 (b) In calculating average final compensation under (a) of this
18 subsection, the department of retirement systems shall include any
19 compensation forgone by a member during the 2011-2013 fiscal biennium
20 as a result of reduced work hours, mandatory leave without pay,
21 temporary layoffs, or reductions to current pay if the reduced
22 compensation is an integral part of the employer's expenditure
23 reduction efforts, as certified by the employer. Reductions to
24 current pay shall not include elimination of previously agreed upon
25 future salary reductions.

26 (6) "Beneficiary" for plan 2 and plan 3 members means any person
27 in receipt of a retirement allowance or other benefit provided by this
28 chapter resulting from service rendered to an employer by another
29 person.

30 (7) "Classified employee" means an employee of a school district
31 or an educational service district who is not eligible for membership
32 in the teachers' retirement system established under chapter 41.32
33 RCW.

34

1 (8)(a) "Compensation earnable" for plan 2 and plan 3 members,
2 means salaries or wages earned by a member during a payroll period for
3 personal services, including overtime payments, and shall include
4 wages and salaries deferred under provisions established pursuant to
5 sections 403(b), 414(h), and 457 of the United States internal revenue
6 code, but shall exclude nonmoney maintenance compensation and lump sum
7 or other payments for deferred annual sick leave, unused accumulated
8 vacation, unused accumulated annual leave, or any form of severance
9 pay.

10 (b) "Compensation earnable" for plan 2 and plan 3 members also
11 includes the following actual or imputed payments, which are not paid
12 for personal services:

13 (i) Retroactive payments to an individual by an employer on
14 reinstatement of the employee in a position, or payments by an
15 employer to an individual in lieu of reinstatement, which are awarded
16 or granted as the equivalent of the salary or wage which the
17 individual would have earned during a payroll period shall be
18 considered compensation earnable to the extent provided in this
19 subsection, and the individual shall receive the equivalent service
20 credit;

21 (ii) In any year in which a member serves in the legislature, the
22 member shall have the option of having such member's compensation
23 earnable be the greater of:

24 (A) The compensation earnable the member would have received had
25 such member not served in the legislature; or

26 (B) Such member's actual compensation earnable received for
27 nonlegislative public employment and legislative service combined.
28 Any additional contributions to the retirement system required because
29 compensation earnable under (b)(ii)(A) of this subsection is greater
30 than compensation earnable under this (b)(ii)(B) of this subsection
31 shall be paid by the member for both member and employer
32 contributions;

33 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
34 and 72.09.240;

1 (iv) Compensation that a member would have received but for a
2 disability occurring in the line of duty only as authorized by RCW
3 41.40.038;

4 (v) Compensation that a member receives due to participation in
5 the leave sharing program only as authorized by RCW 41.04.650 through
6 41.04.670; and

7 (vi) Compensation that a member receives for being in standby
8 status. For the purposes of this section, a member is in standby
9 status when not being paid for time actually worked and the employer
10 requires the member to be prepared to report immediately for work, if
11 the need arises, although the need may not arise.

12 (9) "Department" means the department of retirement systems
13 created in chapter 41.50 RCW.

14 (10) "Director" means the director of the department.

15 (11) "Eligible position" means any position that, as defined by
16 the employer, normally requires five or more months of service a year
17 for which regular compensation for at least seventy hours is earned by
18 the occupant thereof. For purposes of this chapter an employer shall
19 not define "position" in such a manner that an employee's monthly work
20 for that employer is divided into more than one position.

21 (12) "Employee" or "employed" means a person who is providing
22 services for compensation to an employer, unless the person is free
23 from the employer's direction and control over the performance of
24 work. The department shall adopt rules and interpret this subsection
25 consistent with common law.

26 (13) "Employer," for plan 2 and plan 3 members, means a school
27 district or an educational service district. Except as otherwise
28 specifically provided in this chapter, "employer" does not include a
29 government contractor. For purposes of this subsection, a "government
30 contractor" is any entity, including a partnership, limited liability
31 company, for-profit or nonprofit corporation, or person, that provides
32 services pursuant to a contract with an employer. A "government
33 contractor" may be an "arm and agency" of an "employer," making

34

1 employees of the contractor employees of the "employer" in the very
2 limited circumstances described in section 3 of this act.

3 (14) "Final compensation" means the annual rate of compensation
4 earnable by a member at the time of termination of employment.

5 (15) "Index" means, for any calendar year, that year's annual
6 average consumer price index, Seattle, Washington area, for urban wage
7 earners and clerical workers, all items, compiled by the bureau of
8 labor statistics, United States department of labor.

9 (16) "Index A" means the index for the year prior to the
10 determination of a postretirement adjustment.

11 (17) "Index B" means the index for the year prior to index A.

12 (18) "Ineligible position" means any position which does not
13 conform with the requirements set forth in subsection (22) of this
14 section.

15 (19) "Leave of absence" means the period of time a member is
16 authorized by the employer to be absent from service without being
17 separated from membership.

18 (20) "Member" means any employee included in the membership of the
19 retirement system, as provided for in RCW 41.35.030.

20 (21) "Member account" or "member's account" for purposes of plan 3
21 means the sum of the contributions and earnings on behalf of the
22 member in the defined contribution portion of plan 3.

23 (22) "Membership service" means all service rendered as a member.

24 (23) "Pension" means payments for life derived from contributions
25 made by the employer. All pensions shall be paid in monthly
26 installments.

27 (24) "Plan 2" means the Washington school employees' retirement
28 system plan 2 providing the benefits and funding provisions covering
29 persons who first became members of the public employees' retirement
30 system on and after October 1, 1977, and transferred to the Washington
31 school employees' retirement system under RCW 41.40.750.

32 (25) "Plan 3" means the Washington school employees' retirement
33 system plan 3 providing the benefits and funding provisions covering
34

1 persons who first became members of the system on and after September
2 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

3 (26) "Regular interest" means such rate as the director may
4 determine.

5 (27) "Retiree" means any person who has begun accruing a
6 retirement allowance or other benefit provided by this chapter
7 resulting from service rendered to an employer while a member.

8 (28) "Retirement" means withdrawal from active service with a
9 retirement allowance as provided by this chapter.

10 (29) "Retirement allowance" for plan 2 and plan 3 members means
11 monthly payments to a retiree or beneficiary as provided in this
12 chapter.

13 (30) "Retirement system" means the Washington school employees'
14 retirement system provided for in this chapter.

15 (31) "Separation from service" occurs when a person has terminated
16 all employment with an employer.

17 (32) "Service" for plan 2 and plan 3 members means periods of
18 employment by a member in an eligible position or positions for one or
19 more employers for which compensation earnable is paid. Compensation
20 earnable earned for ninety or more hours in any calendar month shall
21 constitute one service credit month except as provided in RCW
22 41.35.180. Compensation earnable earned for at least seventy hours
23 but less than ninety hours in any calendar month shall constitute one-
24 half service credit month of service. Compensation earnable earned
25 for less than seventy hours in any calendar month shall constitute
26 one-quarter service credit month of service. Time spent in standby
27 status, whether compensated or not, is not service.

28 Any fraction of a year of service shall be taken into account in
29 the computation of such retirement allowance or benefits.

30 (a) Service in any state elective position shall be deemed to be
31 full-time service.

32 (b) A member shall receive a total of not more than twelve service
33 credit months of service for such calendar year. If an individual is
34 employed in an eligible position by one or more employers the

1 individual shall receive no more than one service credit month during
2 any calendar month in which multiple service for ninety or more hours
3 is rendered.

4 (c) For purposes of plan 2 and 3 "forty-five days" as used in RCW
5 28A.400.300 is equal to two service credit months. Use of less than
6 forty-five days of sick leave is creditable as allowed under this
7 subsection as follows:

8 (i) Less than eleven days equals one-quarter service credit month;

9 (ii) Eleven or more days but less than twenty-two days equals one-
10 half service credit month;

11 (iii) Twenty-two days equals one service credit month;

12 (iv) More than twenty-two days but less than thirty-three days
13 equals one and one-quarter service credit month; and

14 (v) Thirty-three or more days but less than forty-five days equals
15 one and one-half service credit month.

16 (33) "Service credit month" means a month or an accumulation of
17 months of service credit which is equal to one.

18 (34) "Service credit year" means an accumulation of months of
19 service credit which is equal to one when divided by twelve.

20 (35) "State actuary" or "actuary" means the person appointed
21 pursuant to RCW 44.44.010(2).

22 (36) "State elective position" means any position held by any
23 person elected or appointed to statewide office or elected or
24 appointed as a member of the legislature.

25 (37) "State treasurer" means the treasurer of the state of
26 Washington.

27 (38) "Substitute employee" means a classified employee who is
28 employed by an employer exclusively as a substitute for an absent
29 employee.

30
31 **Sec. 7.** RCW 41.37.010 and 2011 1st sp.s. c 5 s 4 and 2011 c 68 s
32 1 are each reenacted and amended to read as follows:

33 The definitions in this section apply throughout this chapter,
34 unless the context clearly requires otherwise.

1 (1) "Accumulated contributions" means the sum of all contributions
2 standing to the credit of a member in the member's individual account,
3 including any amount paid under RCW 41.50.165(2), together with the
4 regular interest thereon.

5 (2) "Actuarial equivalent" means a benefit of equal value when
6 computed upon the basis of such mortality and other tables as may be
7 adopted by the director.

8 (3) "Adjustment ratio" means the value of index A divided by index
9 B.

10 (4) "Annuity" means payments for life derived from accumulated
11 contributions of a member. All annuities shall be paid in monthly
12 installments.

13 (5)(a) "Average final compensation" means the member's average
14 compensation earnable of the highest consecutive sixty months of
15 service credit months prior to such member's retirement, termination,
16 or death. Periods constituting authorized leaves of absence may not
17 be used in the calculation of average final compensation except under
18 RCW 41.37.290.

19 (b) In calculating average final compensation under (a) of this
20 subsection, the department of retirement systems shall include:

21 (i) Any compensation forgone by a member employed by a state
22 agency or institution during the 2009-2011 fiscal biennium as a result
23 of reduced work hours, mandatory or voluntary leave without pay,
24 temporary reduction in pay implemented prior to December 11, 2010, or
25 temporary layoffs if the reduced compensation is an integral part of
26 the employer's expenditure reduction efforts, as certified by the
27 employer; and

28 (ii) Any compensation forgone by a member employed by the state or
29 a local government employer during the 2011-2013 fiscal biennium as a
30 result of reduced work hours, mandatory leave without pay, temporary
31 layoffs, or reductions to current pay if the reduced compensation is
32 an integral part of the employer's expenditure reduction efforts, as
33 certified by the employer. Reductions to current pay shall not
34 include elimination of previously agreed upon future salary increases.

1 (6) "Beneficiary" means any person in receipt of a retirement
2 allowance or other benefit provided by this chapter resulting from
3 service rendered to an employer by another person.

4 (7)(a) "Compensation earnable" for members, means salaries or
5 wages earned by a member during a payroll period for personal
6 services, including overtime payments, and shall include wages and
7 salaries deferred under provisions established pursuant to sections
8 403(b), 414(h), and 457 of the United States internal revenue code,
9 but shall exclude nonmoney maintenance compensation and lump sum or
10 other payments for deferred annual sick leave, unused accumulated
11 vacation, unused accumulated annual leave, or any form of severance
12 pay.

13 (b) "Compensation earnable" for members also includes the
14 following actual or imputed payments, which are not paid for personal
15 services:

16 (i) Retroactive payments to an individual by an employer on
17 reinstatement of the employee in a position, or payments by an
18 employer to an individual in lieu of reinstatement, which are awarded
19 or granted as the equivalent of the salary or wage which the
20 individual would have earned during a payroll period shall be
21 considered compensation earnable to the extent provided in this
22 subsection, and the individual shall receive the equivalent service
23 credit;

24 (ii) In any year in which a member serves in the legislature, the
25 member shall have the option of having such member's compensation
26 earnable be the greater of:

27 (A) The compensation earnable the member would have received had
28 such member not served in the legislature; or

29 (B) Such member's actual compensation earnable received for
30 nonlegislative public employment and legislative service combined.
31 Any additional contributions to the retirement system required because
32 compensation earnable under (b)(ii)(A) of this subsection is greater
33 than compensation earnable under (b)(ii)(B) of this subsection shall
34 be paid by the member for both member and employer contributions;

1 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
2 and 72.09.240;

3 (iv) Compensation that a member would have received but for a
4 disability occurring in the line of duty only as authorized by RCW
5 41.37.060;

6 (v) Compensation that a member receives due to participation in
7 the leave sharing program only as authorized by RCW 41.04.650 through
8 41.04.670; and

9 (vi) Compensation that a member receives for being in standby
10 status. For the purposes of this section, a member is in standby
11 status when not being paid for time actually worked and the employer
12 requires the member to be prepared to report immediately for work, if
13 the need arises, although the need may not arise.

14 (8) "Department" means the department of retirement systems
15 created in chapter 41.50 RCW.

16 (9) "Director" means the director of the department.

17 (10) "Eligible position" means any permanent, full-time position
18 included in subsection (19) of this section.

19 (11) "Employee" or "employed" means a person who is providing
20 services for compensation to an employer, unless the person is free
21 from the employer's direction and control over the performance of
22 work. The department shall adopt rules and interpret this subsection
23 consistent with common law.

24 (12) "Employer" means the Washington state department of
25 corrections, the Washington state parks and recreation commission, the
26 Washington state gambling commission, the Washington state patrol, the
27 Washington state department of natural resources, and the Washington
28 state liquor control board; any county corrections department; any
29 city corrections department not covered under chapter 41.28 RCW; and
30 any public corrections entity created under RCW 39.34.030 by counties,
31 cities not covered under chapter 41.28 RCW, or both. Except as
32 otherwise specifically provided in this chapter, "employer" does not
33 include a government contractor. For purposes of this subsection, a
34 "government contractor" is any entity, including a partnership,

1 limited liability company, for-profit or nonprofit corporation, or
2 person, that provides services pursuant to a contract with an
3 employer. A "government contractor" may be an "arm and agency" of an
4 "employer," making employees of the contractor employees of the
5 "employer" in the very limited circumstances described in section 3 of
6 this act.

7 (13) "Final compensation" means the annual rate of compensation
8 earnable by a member at the time of termination of employment.

9 (14) "Index" means, for any calendar year, that year's annual
10 average consumer price index, Seattle, Washington area, for urban wage
11 earners and clerical workers, all items, compiled by the bureau of
12 labor statistics, United States department of labor.

13 (15) "Index A" means the index for the year prior to the
14 determination of a postretirement adjustment.

15 (16) "Index B" means the index for the year prior to index A.

16 (17) "Ineligible position" means any position which does not
17 conform with the requirements set forth in subsection (10) of this
18 section.

19 (18) "Leave of absence" means the period of time a member is
20 authorized by the employer to be absent from service without being
21 separated from membership.

22 (19) "Member" means any employee employed by an employer on a
23 full- time basis:

24 (a) Who is in a position that requires completion of a certified
25 criminal justice training course and is authorized by their employer
26 to arrest, conduct criminal investigations, enforce the criminal laws
27 of the state of Washington, and carry a firearm as part of the job;

28 (b) Whose primary responsibility is to ensure the custody and
29 security of incarcerated or probationary individuals as a corrections
30 officer, probation officer, or jailer;

31 (c) Who is a limited authority Washington peace officer, as
32 defined in RCW 10.93.020, for an employer; or

33 (d) Whose primary responsibility is to supervise members eligible
34 under this subsection.

1 (20) "Membership service" means all service rendered as a member.

2 (21) "Pension" means payments for life derived from contributions
3 made by the employer. All pensions shall be paid in monthly
4 installments.

5 (22) "Plan" means the Washington public safety employees'
6 retirement system plan 2.

7 (23) "Regular interest" means such rate as the director may
8 determine.

9 (24) "Retiree" means any person who has begun accruing a
10 retirement allowance or other benefit provided by this chapter
11 resulting from service rendered to an employer while a member.

12 (25) "Retirement" means withdrawal from active service with a
13 retirement allowance as provided by this chapter.

14 (26) "Retirement allowance" means monthly payments to a retiree or
15 beneficiary as provided in this chapter.

16 (27) "Retirement system" means the Washington public safety
17 employees' retirement system provided for in this chapter.

18 (28) "Separation from service" occurs when a person has terminated
19 all employment with an employer.

20 (29) "Service" means periods of employment by a member on or after
21 July 1, 2006, for one or more employers for which compensation
22 earnable is paid. Compensation earnable earned for ninety or more
23 hours in any calendar month shall constitute one service credit month.
24 Compensation earnable earned for at least seventy hours but less than
25 ninety hours in any calendar month shall constitute one-half service
26 credit month of service. Compensation earnable earned for less than
27 seventy hours in any calendar month shall constitute one-quarter
28 service credit month of service. Time spent in standby status,
29 whether compensated or not, is not service.

30 Any fraction of a year of service shall be taken into account in
31 the computation of such retirement allowance or benefits.

32 (a) Service in any state elective position shall be deemed to be
33 full-time service.

34

1 (b) A member shall receive a total of not more than twelve service
2 credit months of service for such calendar year. If an individual is
3 employed in an eligible position by one or more employers the
4 individual shall receive no more than one service credit month during
5 any calendar month in which multiple service for ninety or more hours
6 is rendered.

7 (30) "Service credit month" means a month or an accumulation of
8 months of service credit which is equal to one.

9 (31) "Service credit year" means an accumulation of months of
10 service credit which is equal to one when divided by twelve.

11 (32) "State actuary" or "actuary" means the person appointed
12 pursuant to RCW 44.44.010(2).

13 (33) "State elective position" means any position held by any
14 person elected or appointed to statewide office or elected or
15 appointed as a member of the legislature.

16 (34) "State treasurer" means the treasurer of the state of
17 Washington.

18
19 **Sec. 8.** RCW 41.40.010 and 2011 1st sp.s. c 5 s 5 are each amended
20 to read as follows:

21 As used in this chapter, unless a different meaning is plainly
22 required by the context:

23 (1) "Accumulated contributions" means the sum of all contributions
24 standing to the credit of a member in the member's individual account,
25 including any amount paid under RCW 41.50.165(2), together with the
26 regular interest thereon.

27 (2) "Actuarial equivalent" means a benefit of equal value when
28 computed upon the basis of such mortality and other tables as may be
29 adopted by the director.

30 (3) "Adjustment ratio" means the value of index A divided by index
31 B.

32 (4) "Annual increase" means, initially, fifty-nine cents per month
33 per year of service which amount shall be increased each July 1st by
34 three percent, rounded to the nearest cent.

1 (5) "Annuity" means payments for life derived from accumulated
2 contributions of a member. All annuities shall be paid in monthly
3 installments.

4 (6)(a) "Average final compensation" for plan 1 members, means the
5 annual average of the greatest compensation earnable by a member
6 during any consecutive two year period of service credit months for
7 which service credit is allowed; or if the member has less than two
8 years of service credit months then the annual average compensation
9 earnable during the total years of service for which service credit is
10 allowed.

11 (b) "Average final compensation" for plan 2 and plan 3 members,
12 means the member's average compensation earnable of the highest
13 consecutive sixty months of service credit months prior to such
14 member's retirement, termination, or death. Periods constituting
15 authorized leaves of absence may not be used in the calculation of
16 average final compensation except under RCW 41.40.710(2) or (c) of
17 this subsection.

18 (c) In calculating average final compensation under this
19 subsection for a member of plan 1, 2, or 3, the department of
20 retirement systems shall include:

21 (i) Any compensation forgone by the member during the 2009-2011
22 fiscal biennium as a result of reduced work hours, voluntary leave
23 without pay, temporary reduction in pay implemented prior to December
24 11, 2010, or temporary furloughs if the reduced compensation is an
25 integral part of the employer's expenditure reduction efforts, as
26 certified by the employer; and

27 (ii) Any compensation forgone by a member employed by the state or
28 a local government during the 2011-2013 fiscal biennium as a result of
29 reduced work hours, mandatory leave without pay, temporary layoffs, or
30 reductions to current pay if the reduced compensation is an integral
31 part of the employer's expenditure reduction efforts, as certified by
32 the employer. Reductions to current pay shall not include elimination
33 of previously agreed upon future salary increases.

34

1 (7)(a) "Beneficiary" for plan 1 members, means any person in
2 receipt of a retirement allowance, pension or other benefit provided
3 by this chapter.

4 (b) "Beneficiary" for plan 2 and plan 3 members, means any person
5 in receipt of a retirement allowance or other benefit provided by this
6 chapter resulting from service rendered to an employer by another
7 person.

8 (8)(a) "Compensation earnable" for plan 1 members, means salaries
9 or wages earned during a payroll period for personal services and
10 where the compensation is not all paid in money, maintenance
11 compensation shall be included upon the basis of the schedules
12 established by the member's employer.

13 (i) "Compensation earnable" for plan 1 members also includes the
14 following actual or imputed payments, which are not paid for personal
15 services:

16 (A) Retroactive payments to an individual by an employer on
17 reinstatement of the employee in a position, or payments by an
18 employer to an individual in lieu of reinstatement in a position which
19 are awarded or granted as the equivalent of the salary or wage which
20 the individual would have earned during a payroll period shall be
21 considered compensation earnable and the individual shall receive the
22 equivalent service credit;

23 (B) If a leave of absence is taken by an individual for the
24 purpose of serving in the state legislature, the salary which would
25 have been received for the position from which the leave of absence
26 was taken, shall be considered as compensation earnable if the
27 employee's contribution is paid by the employee and the employer's
28 contribution is paid by the employer or employee;

29 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
30 and 72.09.240;

31 (D) Compensation that a member would have received but for a
32 disability occurring in the line of duty only as authorized by RCW
33 41.40.038;

34

1 (E) Compensation that a member receives due to participation in
2 the leave sharing program only as authorized by RCW 41.04.650 through
3 41.04.670; and

4 (F) Compensation that a member receives for being in standby
5 status. For the purposes of this section, a member is in standby
6 status when not being paid for time actually worked and the employer
7 requires the member to be prepared to report immediately for work, if
8 the need arises, although the need may not arise.

9 (ii) "Compensation earnable" does not include:

10 (A) Remuneration for unused sick leave authorized under RCW
11 41.04.340, 28A.400.210, or 28A.310.490;

12 (B) Remuneration for unused annual leave in excess of thirty days
13 as authorized by RCW 43.01.044 and 43.01.041.

14 (b) "Compensation earnable" for plan 2 and plan 3 members, means
15 salaries or wages earned by a member during a payroll period for
16 personal services, including overtime payments, and shall include
17 wages and salaries deferred under provisions established pursuant to
18 sections 403(b), 414(h), and 457 of the United States Internal Revenue
19 Code, but shall exclude nonmoney maintenance compensation and lump sum
20 or other payments for deferred annual sick leave, unused accumulated
21 vacation, unused accumulated annual leave, or any form of severance
22 pay.

23 "Compensation earnable" for plan 2 and plan 3 members also
24 includes the following actual or imputed payments, which are not paid
25 for personal services:

26 (i) Retroactive payments to an individual by an employer on
27 reinstatement of the employee in a position, or payments by an
28 employer to an individual in lieu of reinstatement in a position which
29 are awarded or granted as the equivalent of the salary or wage which
30 the individual would have earned during a payroll period shall be
31 considered compensation earnable to the extent provided above, and the
32 individual shall receive the equivalent service credit;

33

34

1 (ii) In any year in which a member serves in the legislature, the
2 member shall have the option of having such member's compensation
3 earnable be the greater of:

4 (A) The compensation earnable the member would have received had
5 such member not served in the legislature; or

6 (B) Such member's actual compensation earnable received for
7 nonlegislative public employment and legislative service combined.
8 Any additional contributions to the retirement system required because
9 compensation earnable under (b)(ii)(A) of this subsection is greater
10 than compensation earnable under (b)(ii)(B) of this subsection shall
11 be paid by the member for both member and employer contributions;

12 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
13 and 72.09.240;

14 (iv) Compensation that a member would have received but for a
15 disability occurring in the line of duty only as authorized by RCW
16 41.40.038;

17 (v) Compensation that a member receives due to participation in
18 the leave sharing program only as authorized by RCW 41.04.650 through
19 41.04.670; and

20 (vi) Compensation that a member receives for being in standby
21 status. For the purposes of this section, a member is in standby
22 status when not being paid for time actually worked and the employer
23 requires the member to be prepared to report immediately for work, if
24 the need arises, although the need may not arise.

25 (9) "Department" means the department of retirement systems
26 created in chapter 41.50 RCW.

27 (10) "Director" means the director of the department.

28 (11) "Eligible position" means:

29 (a) Any position that, as defined by the employer, normally
30 requires five or more months of service a year for which regular
31 compensation for at least seventy hours is earned by the occupant
32 thereof. For purposes of this chapter an employer shall not define
33 "position" in such a manner that an employee's monthly work for that
34 employer is divided into more than one position;

1 (b) Any position occupied by an elected official or person
2 appointed directly by the governor, or appointed by the chief justice
3 of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which
4 compensation is paid.

5 (12) "Employee" or "employed" means a person who is providing
6 services for compensation to an employer, unless the person is free
7 from the employer's direction and control over the performance of
8 work. The department shall adopt rules and interpret this subsection
9 consistent with common law.

10 (13)(a) "Employer" for plan 1 members, means every branch,
11 department, agency, commission, board, and office of the state, any
12 political subdivision or association of political subdivisions of the
13 state admitted into the retirement system, and legal entities
14 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and
15 the term shall also include any labor guild, association, or
16 organization the membership of a local lodge or division of which is
17 comprised of at least forty percent employees of an employer (other
18 than such labor guild, association, or organization) within this
19 chapter. The term may also include any city of the first class that
20 has its own retirement system.

21 (b) "Employer" for plan 2 and plan 3 members, means every branch,
22 department, agency, commission, board, and office of the state, and
23 any political subdivision and municipal corporation of the state
24 admitted into the retirement system, including public agencies created
25 pursuant to RCW 35.63.070, 36.70.060, and 39.34.030; except that after
26 August 31, 2000, school districts and educational service districts
27 will no longer be employers for the public employees' retirement
28 system plan 2.

29 (c) Except as otherwise specifically provided in this chapter,
30 "employer" does not include a government contractor. For purposes of
31 this subsection, a "government contractor" is any entity, including a
32 partnership, limited liability company, for-profit or nonprofit
33 corporation, or person, that provides services pursuant to a contract
34 with an employer. A "government contractor" may be an "arm and

1 agency" of an "employer," making employees of the contractor employees
2 of the "employer" in the very limited circumstances described in
3 section 3 of this act.

4 (14) "Final compensation" means the annual rate of compensation
5 earnable by a member at the time of termination of employment.

6 (15) "Index" means, for any calendar year, that year's annual
7 average consumer price index, Seattle, Washington area, for urban wage
8 earners and clerical workers, all items, compiled by the bureau of
9 labor statistics, United States department of labor.

10 (16) "Index A" means the index for the year prior to the
11 determination of a postretirement adjustment.

12 (17) "Index B" means the index for the year prior to index A.

13 (18) "Index year" means the earliest calendar year in which the
14 index is more than sixty percent of index A.

15 (19) "Ineligible position" means any position which does not
16 conform with the requirements set forth in subsection (11) of this
17 section.

18 (20) "Leave of absence" means the period of time a member is
19 authorized by the employer to be absent from service without being
20 separated from membership.

21 (21) "Member" means any employee included in the membership of the
22 retirement system, as provided for in RCW 41.40.023. RCW 41.26.045
23 does not prohibit a person otherwise eligible for membership in the
24 retirement system from establishing such membership effective when he
25 or she first entered an eligible position.

26 (22) "Member account" or "member's account" for purposes of plan 3
27 means the sum of the contributions and earnings on behalf of the
28 member in the defined contribution portion of plan 3.

29 (23) "Membership service" means:

30 (a) All service rendered, as a member, after October 1, 1947;

31 (b) All service after October 1, 1947, to any employer prior to
32 the time of its admission into the retirement system for which member
33 and employer contributions, plus interest as required by RCW
34 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

1 (c) Service not to exceed six consecutive months of probationary
2 service rendered after April 1, 1949, and prior to becoming a member,
3 in the case of any member, upon payment in full by such member of the
4 total amount of the employer's contribution to the retirement fund
5 which would have been required under the law in effect when such
6 probationary service was rendered if the member had been a member
7 during such period, except that the amount of the employer's
8 contribution shall be calculated by the director based on the first
9 month's compensation earnable as a member;

10 (d) Service not to exceed six consecutive months of probationary
11 service, rendered after October 1, 1947, and before April 1, 1949, and
12 prior to becoming a member, in the case of any member, upon payment in
13 full by such member of five percent of such member's salary during
14 said period of probationary service, except that the amount of the
15 employer's contribution shall be calculated by the director based on
16 the first month's compensation earnable as a member.

17 (24) "New member" means a person who becomes a member on or after
18 April 1, 1949, except as otherwise provided in this section.

19 (25) "Original member" of this retirement system means:

20 (a) Any person who became a member of the system prior to April 1,
21 1949;

22 (b) Any person who becomes a member through the admission of an
23 employer into the retirement system on and after April 1, 1949, and
24 prior to April 1, 1951;

25 (c) Any person who first becomes a member by securing employment
26 with an employer prior to April 1, 1951, provided the member has
27 rendered at least one or more years of service to any employer prior
28 to October 1, 1947;

29 (d) Any person who first becomes a member through the admission of
30 an employer into the retirement system on or after April 1, 1951,
31 provided, such person has been in the regular employ of the employer
32 for at least six months of the twelve-month period preceding the said
33 admission date;

34

1 (e) Any member who has restored all contributions that may have
2 been withdrawn as provided by RCW 41.40.150 and who on the effective
3 date of the individual's retirement becomes entitled to be credited
4 with ten years or more of membership service except that the
5 provisions relating to the minimum amount of retirement allowance for
6 the member upon retirement at age seventy as found in RCW 41.40.190(4)
7 shall not apply to the member;

8 (f) Any member who has been a contributor under the system for two
9 or more years and who has restored all contributions that may have
10 been withdrawn as provided by RCW 41.40.150 and who on the effective
11 date of the individual's retirement has rendered five or more years of
12 service for the state or any political subdivision prior to the time
13 of the admission of the employer into the system; except that the
14 provisions relating to the minimum amount of retirement allowance for
15 the member upon retirement at age seventy as found in RCW 41.40.190(4)
16 shall not apply to the member.

17 (26) "Pension" means payments for life derived from contributions
18 made by the employer. All pensions shall be paid in monthly
19 installments.

20 (27) "Plan 1" means the public employees' retirement system, plan
21 1 providing the benefits and funding provisions covering persons who
22 first became members of the system prior to October 1, 1977.

23 (28) "Plan 2" means the public employees' retirement system, plan
24 2 providing the benefits and funding provisions covering persons who
25 first became members of the system on and after October 1, 1977, and
26 are not included in plan 3.

27 (29) "Plan 3" means the public employees' retirement system, plan
28 3 providing the benefits and funding provisions covering persons who:

29 (a) First become a member on or after:

30 (i) March 1, 2002, and are employed by a state agency or institute
31 of higher education and who did not choose to enter plan 2; or

32 (ii) September 1, 2002, and are employed by other than a state
33 agency or institute of higher education and who did not choose to
34 enter plan 2; or

1 (b) Transferred to plan 3 under RCW 41.40.795.

2 (30) "Prior service" means all service of an original member
3 rendered to any employer prior to October 1, 1947.

4 (31) "Regular interest" means such rate as the director may
5 determine.

6 (32) "Retiree" means any person who has begun accruing a
7 retirement allowance or other benefit provided by this chapter
8 resulting from service rendered to an employer while a member.

9 (33) "Retirement" means withdrawal from active service with a
10 retirement allowance as provided by this chapter.

11 (34) "Retirement allowance" means the sum of the annuity and the
12 pension.

13 (35) "Retirement system" means the public employees' retirement
14 system provided for in this chapter.

15 (36) "Separation from service" occurs when a person has terminated
16 all employment with an employer. Separation from service or
17 employment does not occur, and if claimed by an employer or employee
18 may be a violation of RCW 41.40.055, when an employee and employer
19 have a written or oral agreement to resume employment with the same
20 employer following termination. Mere expressions or inquiries about
21 postretirement employment by an employer or employee that do not
22 constitute a commitment to reemploy the employee after retirement are
23 not an agreement under this subsection.

24 (37)(a) "Service" for plan 1 members, except as provided in RCW
25 41.40.088, means periods of employment in an eligible position or
26 positions for one or more employers rendered to any employer for which
27 compensation is paid, and includes time spent in office as an elected
28 or appointed official of an employer. Compensation earnable earned in
29 full time work for seventy hours or more in any given calendar month
30 shall constitute one service credit month except as provided in RCW
31 41.40.088. Compensation earnable earned for less than seventy hours
32 in any calendar month shall constitute one-quarter service credit
33 month of service except as provided in RCW 41.40.088. Only service
34 credit months and one-quarter service credit months shall be counted

1 in the computation of any retirement allowance or other benefit
2 provided for in this chapter. Any fraction of a year of service shall
3 be taken into account in the computation of such retirement allowance
4 or benefits. Time spent in standby status, whether compensated or
5 not, is not service.

6 (i) Service by a state employee officially assigned by the state
7 on a temporary basis to assist another public agency, shall be
8 considered as service as a state employee: PROVIDED, That service to
9 any other public agency shall not be considered service as a state
10 employee if such service has been used to establish benefits in any
11 other public retirement system.

12 (ii) An individual shall receive no more than a total of twelve
13 service credit months of service during any calendar year. If an
14 individual is employed in an eligible position by one or more
15 employers the individual shall receive no more than one service credit
16 month during any calendar month in which multiple service for seventy
17 or more hours is rendered.

18 (iii) A school district employee may count up to forty-five days
19 of sick leave as creditable service solely for the purpose of
20 determining eligibility to retire under RCW 41.40.180 as authorized by
21 RCW 28A.400.300. For purposes of plan 1 "forty-five days" as used in
22 RCW 28A.400.300 is equal to two service credit months. Use of less
23 than forty-five days of sick leave is creditable as allowed under this
24 subsection as follows:

25 (A) Less than twenty-two days equals one-quarter service credit
26 month;

27 (B) Twenty-two days equals one service credit month;

28 (C) More than twenty-two days but less than forty-five days equals
29 one and one-quarter service credit month.

30 (b) "Service" for plan 2 and plan 3 members, means periods of
31 employment by a member in an eligible position or positions for one or
32 more employers for which compensation earnable is paid. Compensation
33 earnable earned for ninety or more hours in any calendar month shall
34 constitute one service credit month except as provided in RCW

1 41.40.088. Compensation earnable earned for at least seventy hours
2 but less than ninety hours in any calendar month shall constitute one-
3 half service credit month of service. Compensation earnable earned
4 for less than seventy hours in any calendar month shall constitute
5 one-quarter service credit month of service. Time spent in standby
6 status, whether compensated or not, is not service.

7 Any fraction of a year of service shall be taken into account in
8 the computation of such retirement allowance or benefits.

9 (i) Service in any state elective position shall be deemed to be
10 full time service, except that persons serving in state elective
11 positions who are members of the Washington school employees'
12 retirement system, teachers' retirement system, public safety
13 employees' retirement system, or law enforcement officers' and
14 firefighters' retirement system at the time of election or appointment
15 to such position may elect to continue membership in the Washington
16 school employees' retirement system, teachers' retirement system,
17 public safety employees' retirement system, or law enforcement
18 officers' and firefighters' retirement system.

19 (ii) A member shall receive a total of not more than twelve
20 service credit months of service for such calendar year. If an
21 individual is employed in an eligible position by one or more
22 employers the individual shall receive no more than one service credit
23 month during any calendar month in which multiple service for ninety
24 or more hours is rendered.

25 (iii) Up to forty-five days of sick leave may be creditable as
26 service solely for the purpose of determining eligibility to retire
27 under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of
28 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is
29 equal to two service credit months. Use of less than forty-five days
30 of sick leave is creditable as allowed under this subsection as
31 follows:

- 32 (A) Less than eleven days equals one-quarter service credit month;
33 (B) Eleven or more days but less than twenty-two days equals one-
34 half service credit month;

1 (C) Twenty-two days equals one service credit month;

2 (D) More than twenty-two days but less than thirty-three days
3 equals one and one-quarter service credit month;

4 (E) Thirty-three or more days but less than forty-five days equals
5 one and one-half service credit month.

6 (38) "Service credit month" means a month or an accumulation of
7 months of service credit which is equal to one.

8 (39) "Service credit year" means an accumulation of months of
9 service credit which is equal to one when divided by twelve.

10 (40) "State actuary" or "actuary" means the person appointed
11 pursuant to RCW 44.44.010(2).

12 (41) "State elective position" means any position held by any
13 person elected or appointed to statewide office or elected or
14 appointed as a member of the legislature.

15 (42) "State treasurer" means the treasurer of the state of
16 Washington.

17 (43) "Totally incapacitated for duty" means total inability to
18 perform the duties of a member's employment or office or any other
19 work for which the member is qualified by training or experience."

20

21 Correct the title.

??

EFFECT: Strikes the underlying bill and expresses that the intent of the bill is to recognize the *Dolan v. King County*, Cause No. 82842-3, and that under very unusual circumstances employees of an "arm or agency" of a government employer are actually employees of the government employer.

The act does not affect the Supreme Court of Washington's decision in *Dolan v. King County*, nor the rights of any King County public defenders and staff to enrollment in the Public Employees' Retirement System, now and in the future.

A new definition of "arm and agency" of a government employer is created for Title 41 RCW, which includes laws on state and local government employment, civil service, collective bargaining, health benefits, and pensions.

22 Definitions for the Law Enforcement Officers' and Firefighters'

Retirement System, the Teachers' Retirement System, the School Employees' Retirement System, the Public Safety Employees' Retirement System, and the Public Employees' Retirement System are amended to expand the definition of "employer" to include a governmental contractor that qualifies as an "arm or agency" of an employer.

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